

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

**MICHELLE SUTHERLAND,**

:

**Plaintiff**

:

**CIVIL ACTION NO. 3:17-0124**

:

**v.**

**JUDGE MANNION**

:

**NANCY A. BETTYHILL, ACTING  
COMMISSIONER OF SOCIAL  
SECURITY,**

:

:

**Defendant**

**ORDER**

Pending before the court is the report of Magistrate Judge Joseph F. Saporito which recommends that the Commissioner's decision be vacated and that the instant action be remanded to the Commissioner to conduct a new administrative hearing. (Doc. 13). By letter dated March 20, 2018, the Commissioner has waived the opportunity to object to Judge Saporito's report. (Doc. 14). No objections have been filed by the plaintiff. Upon review, the report will be adopted in its entirety.

When no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give

some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

In her appeal, the plaintiff argues that the ALJ erred when he did not include a sit-stand option in the RFC. She supports her argument by pointing to an MRI of her lumbar spine, Dr. Kilkelly's medical opinion stating she needed a sit-stand option, and her own testimony.

In carefully considering the plaintiff's claims, Judge Saporito found that the ALJ failed to adequately explain Dr. Kilkelly's opinion, and which portions of his opinion he rejected. Specifically, Judge Saporito found that the final decision denying Ms. Sutherland's claims are not supported by substantial evidence. Accordingly, Judge Saporito recommends that the decision of the ALJ be vacated and the matter be remanded to fully develop the record, conduct a new administrative hearing, and appropriately evaluate the evidence pursuant to sentence four of 42 U.S.C. §405(g).

The court has reviewed the entire report of Judge Saporito and finds no clear error of record. The court further agrees with the sound reasoning which led Judge Saporito to his recommendation. As such, the court adopts the reasoning of Judge Saporito as the opinion of the court.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The report and recommendation of Judge Saporito, (**Doc. 19**), is **ADOPTED IN ITS ENTIRETY**.
- (2) The decision of the Commissioner is **VACATED**.
- (3) The instant action is **REMANDED** to the Commissioner to fully develop the record, conduct a new administrative hearing, and appropriately evaluate the evidence pursuant to sentence four of 42 U.S.C. §405(g).
- (4) The Clerk of Court is directed to **CLOSE THIS CASE**.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: May 11, 2018**

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